BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XIII of ARM, pertaining to definitions, adoption by reference, solicitation and evaluation of qualifications and maintenance of list, energy service provider delisting and discipline, energy performance contract process, multiple projects or contracts, measuring and verifying guaranteed cost savings, cost of measurement and verification, cost-effectiveness, energy service provider reporting requirements, operation and maintenance, contract term, guaranteed cost savings as percentage of total project cost, guaranteed cost savings, escalation rates, and open book pricing	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION (ENERGY)

TO: All Concerned Persons

1. On September 6, 2018, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., August 30, 2018, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. The proposed new rules for a subchapter for energy performance contracting provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Base Agreement" means the agreement between the department and an energy service provider provided in 90-4-1110, MCA.

(2) "Baseline" means the pre-project conditions used to determine any use or cost against which the guaranteed cost savings will be measured. Where possible,

the baseline should be established by data for a term of not less than 12 months. Baseline use and costs document pre-project energy or water use, or operation and maintenance costs and conditions.

(3) "Baseline utility rate" means the mutually agreed upon utility rate at the time of an investment grade audit.

(4) "Buy-down" means a payment by an entity under 90-4-1114(2), MCA, that is applied to an energy performance contract to reduce the amount of financing needed to pay for the energy performance contract.

(5) "Certificate of acceptance" is a document issued and signed by a governmental entity to document the completion and acceptance of contract work.

(a) The certificate of acceptance for an investment grade audit report documents the governmental entity's review and acceptance of the investment grade audit report or any addendum or amendment to the investment grade audit report.

(b) The certificate of acceptance for implementation of the installed equipment documents the governmental entity's inspection and acceptance of the installation and operation of all project components.

(6) "Commissioning" means the process of verifying and documenting that the facility and all its systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet the governmental entity's project requirements.

(7) "Contingency" is a predetermined amount or percentage of the contract held for unpredictable changes in the project. A contingency may account for errors and omissions in the construction documents, modify or change the scope of the project, or pay for addressing unknown conditions.

(8) "Cost-effective or cost-effectiveness" has the same meaning as in 90-4-1102, MCA.

(9) "Cost-saving measure" has the same meaning as in 90-4-1102, MCA.

(10) "Cost-weighted average useful life" of a cost-saving measure means the sum of the cost of each cost-saving measure times the useful life of each measure divided by the total cost of the cost-saving measures expressed as $CWA = ((CSM_1\$ \times UL_1) + (CSM_2\$ \times UL_2) + \ldots + (CSM_n\$ \times UL_n))/CSM_T$.

(a) CWA is the cost-weighted average useful life;

(b) $CSM_1\$$ thru $CSM_n\$$ is the cost of each cost-saving measure;

(c) UL_1 thru UL_n is the useful life of the cost-saving measure; and

(d) CSM_T is the total cost of all cost-saving measures included in the project.

(11) "Department" has the same meaning as in 90-4-1102, MCA.

(12) "Effective date" means the date the certificate of acceptance for implementation of installed equipment is signed.

(13) "Energy Code" means the International Energy Conservation Code as adopted by the state of Montana.

(14) "Energy performance contract" has the same meaning as in 90-4-1102, MCA.

(15) "Energy Performance Contracting Program" means the program administered by the department to implement Title 90, chapter 4, part 11, MCA.

(16) "Escalation rate" means the annual percentage change in the cost of

goods or services. An escalation rate may be guaranteed or unguaranteed.

(17) "Governmental entity" has the same meaning as in 90-4-1102, MCA.

(18) "Guarantee period" has the same meaning as in 90-4-1102, MCA.

(19) "Guaranteed cost savings" has the same meaning as in 90-4-1102, MCA.

(20) "Initial monitoring period" means a term starting on the effective date of an energy performance contract and ending not less than three consecutive years after the effective date.

(21) "Investment grade audit" has the same meaning as investment-grade energy audit in 90-4-1102, MCA.

(22) "Measurement and verification" has the same meaning as in 90-4-1102, MCA.

(23) "Open book pricing" means a contract for goods or services in which the parties define the costs to be paid and the markups that the energy service provider may add to these costs. The project is then invoiced to the entity based on the actual costs incurred plus the agreed markups.

(24) "Operation and maintenance" means the decisions and actions regarding the control and upkeep of property and equipment. These include, but are not limited to:

(a) actions focused on scheduling, procedures, and work/systems control and optimization; and

(b) performance of routine, preventive, predictive, scheduled, and unscheduled actions aimed at preventing equipment failure or decline with the goal of increasing efficiency, reliability, and safety.

(25) "Operation and maintenance cost savings" has the same meaning as in 90-4-1102, MCA.

(26) "Qualified energy service provider" has the same meaning as in 90-4-1102, MCA.

(27) "Shortfall" means the dollar amount by which the measured cost savings fall short of the guaranteed cost savings and any unguaranteed cost savings resulting from the use of escalation rates in the energy performance contract.

(28) "State-owned building" means a building owned by a state agency identified under 90-4-605, MCA.

(29) "Stipulated" means a set value for a parameter that is agreed upon by the entity and the energy service provider. A stipulated value remains constant throughout the term of the contract, regardless of the actual behavior of that parameter. This term has the same meaning as "estimated" for measurement and verification purposes.

(30) "Total project cost" means the total cost of the project, including costs for investment grade audit, energy performance contract, measurement and verification, contingency, and all other energy service provider fees and services provided under the energy performance contract to completely fulfill the project.

(31) "Unguaranteed" means cost savings from a utility price escalation rate that is not specifically guaranteed. If included in an energy performance contract, unguaranteed cost savings are combined with guaranteed cost savings to determine the cost-effectiveness of cost-saving measures and the amount of any shortfall.

(32) "Utility cost savings" has the same meaning as in 90-4-1102, MCA.

AUTH: 90-4-1110, MCA
IMP: 90-4-1110, 90-4-1114, MCA

REASON: New Rule I ensures that phrases or words used in the proposed rules are clearly defined so that persons reading the rules will attribute the same meaning to each phrase or word.

The definitions of these terms are from sources as noted, including 90-4-1102, MCA, ASHRAE, the Energy Services Coalition (a national association for the energy performance contracting industry), and online dictionaries. The definitions are necessary to clarify the meaning of terms used in the energy performance contracting program.

"Base Agreement" is required in 90-4-1110(1)(c), MCA. The reason for the Base Agreement is to put into one place the major elements of the Energy Performance Contracting Program and inform the providers of the requirements of the program.

"Baseline" is referred to in the definitions of Guaranteed Cost Savings in 90-4-1102(8), MCA, and operation and maintenance cost savings in 90-4-1102(11), MCA.

"Baseline utility rate" is drawn from the definition of "guaranteed cost savings" in 90-4-1102(8), MCA.

"Buy-down" is a term commonly used in energy performance contracting to describe an upfront cash payment to reduce the amount financed.

"Certificate of Acceptance" or "COA" is a document commonly used in performance contracting programs to document a governmental entity's acceptance that all requirements for either an investment grade audit contract or an energy performance contract have been completed by the provider. It is similar to the notice of substantial completion for construction projects, but is issued when all terms of the contract are completed.

"Commissioning" is based on the ASHRAE definition as found in ASHRAE commissioning guidelines and standards.

"Contingency" is based on the definition provided by the American Institute of Architects as found in *The Architect's Handbook of Professional Practice*.

"Cost-weighted average useful life" is a term used in 90-4-1114(3)(b), MCA, and requires a mathematical formula to standardize the calculation. The formula provided is a standard mathematical formula used for weighted averages. The formula is adapted to use the cost and the useful life of each cost-saving measure.

"Effective date" would be defined here to provide consistency with the same term used in statute and in contract documents. Section 90-4-1102(7), MCA, defines Guarantee Period as beginning on the "effective date of the contract." "Initial Monitoring Period," which is used for measurement and verification, would also be defined to start on the "effective date." The guarantee period in statute (90-4-1114(4) and 90-4-1114(6)(c), MCA) means the period after the project is complete that is used to determine if the project's guaranteed savings have been met. Therefore, the "effective date" must be the date the certificate of acceptance for implementation of installed equipment is issued. The definition of "effective date" would distinguish that term from the date the energy performance contract was signed.

"Energy Code" would be defined because it is being used in these rules as a shorthand term for the International Energy Conservation Code as amended and adopted by reference by the Department of Labor and Industry.

"Escalation rate" is based on definitions from several sources, most closely following the definition used in thelawdictionary.org. The term is used to determine savings caused by cost increases over time for each commodity and operation and maintenance costs.

"Initial Monitoring Period" is used in 90-4-1114(5)(a), MCA, concerning measurement and verification costs.

"Investment grade audit" and "Investment-grade energy audit" are interchangeable terms used in the energy performance contracting program.

"Open Book Pricing" is common where guaranteed maximum pricing is standard practice. This definition is based on based on articles from the energy performance contracting industry as well as a briefing paper from the Chartered Institute of Public Finance and Accountancy (CIPFA), an organization based in the UK that encourages accountability for government contracts.

"Operation and Maintenance" is as defined in the U.S. Department of Energy's Federal Energy Management Program Operations & Maintenance Best Practices, A Guide to Achieve Operational Savings. It is used in 90-4-1102, MCA, to address cost savings and in 90-4-1113, MCA, to address required components of an investment grade audit. The proposed definition limits the term to the control and upkeep of property and equipment. This definition is consistent with that used by other national organizations, including National Institute of Building Sciences and the American Council for an Energy-Efficient Economy.

"Shortfall" is used in 90-4-1114(6)(a), MCA, as part of the term "verified annual guaranteed cost savings shortfall" and as a shorthand reference for that term.

"Stipulated," along with variations of the term, is frequently used in energy performance contract as an alternative to the use of "estimated" as it is a value that typically is not measured.

"Total Project Cost" includes all costs associated with the project. Section 90-4-1110(3)(a), MCA, authorizes the department to adopt rules to establish criteria for the amount of project costs covered by guaranteed cost savings. A definition of total project cost is necessary for the department to use in establishing those criteria as well as other purposes in these proposed rules and program documents.

"Unguaranteed" is referred to in three statutes. Section 90-4-1110(3)(d), MCA, authorizes the department to adopt rules to determine how unguaranteed utility price escalation rates may be applied to an energy performance contract. Sections 90-4-1102(1) and 1114(6)(a), MCA, refer to unguaranteed utility price escalation rates concerning cost-effectiveness and shortfall payments. An energy service provider generally does not guarantee an escalation rate, thereby making any escalation rate unguaranteed. However, under 90-4-1114(6)(a), MCA, of these New Rules, an unguaranteed utility price escalation rate, if used in an energy performance contract, may provide part of the cost savings that are used to determine cost-effectiveness and to determine if guaranteed plus unguaranteed cost savings will pay for the financing repayment obligation.

Other terms are defined to have the same meaning as in the statute and would be defined because they are used in these rules.

NEW RULE II ADOPTION BY REFERENCE (1) Energy Performance Contract projects are expected to meet all current building codes and industry standards. Therefore, the department adopts and incorporates by reference:

(a) Efficiency Valuation Organization (EVO), International Performance Measurement and Verification Protocol (IPMVP), Volume I, EVO 10000 – 1:2012. The IPMVP provides a framework for reporting a projects energy savings and is available at http://evo-world.org/en/.

(b) U.S. Department of Energy Federal Energy Management Program (FEMP), Measurement and Verification Guidelines: Measurement and Verification for Performance-Based Contracts, Version 4.0, November 2015. This document contains procedures and guidelines for quantifying the savings resulting from implementation of cost saving measures. It is available at: http://energy.gov/sites/prod/files/2016/01/f28/mv_guide_4_0.pdf;

(c) energy codes and standards:

(i) International Code Council, International Energy Conservation Code (IECC) (2012 Edition), as adopted and amended in ARM 24.301.161. The International Energy Conservation Code contains energy standards for construction. The 2012 version of the IECC is available at https://codes.iccsafe.org/public/collections/ICC%20Standards;

(ii) American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), Energy Standard for Buildings Except Low-Rise Residential Buildings. The American Society of Heating, Refrigerating and Air-Conditioning Engineer standards contain standards specific to the heating, refrigerating and air-conditioning systems used in buildings. All references to that document in this subchapter are to Standard 90.1-2010, which is available at http://www.techstreet.com/ashrae/standards/ashrae-90-1-2010-i-p?ashrae_auth_token=&gateway_code=ashrae&product_id=1739526; and

(iii) Montana Department of Administration, Architecture & Engineering Division, State of Montana High-Performance Building Standards. The High-Performance Building Standards require above code construction for state owned or leased facilities. All references to that document in this subchapter are to Adopted Version 1, December 1, 2013, which is available at http://www.architecture.mt.gov/Portals/14/docs/HPBS/HPBS_Documents_Portfolio_v1_Adopted_12_1_13.pdf.

(d) U.S. Department of Energy (DOE) Federal Energy Management Program (FEMP), Energy Escalation Rate Calculator. This calculator provides a consistent method for analyzing capital investments in buildings. All references to the Energy Escalation Rate Calculator in this subchapter are to version 2.0-16. The current version is posted at http://energy.gov/eere/femp/energy-escalation-rate-calculator-download.

(2) A printed version of each of the documents in (1) is available for viewing at the department's office located at 1520 E. 6th Avenue, Helena, MT 59601.

AUTH: 90-4-1110, MCA

IMP: 90-4-1110, 90-4-1114, MCA

REASON: New Rule II is reasonable and necessary to adopt by reference building codes and industry standards to be used in implementation of Title 90, chapter 4, subchapter 11, MCA.

Sections (1)(a) through (d) specify codes and standards specific to energy performance contracts. The IPMVP is a standard document approximately 140 pages used internationally for measurement and verification of savings for performance-based contracts. The IPMVP offers general guidelines and processes for conducting measurement and verification activities. The FEMP Measurement and Verification Guidelines, consisting of about 108 pages, are based on the IPMVP and give greater detail on how the IPMVP should be applied to the measurement and verification process.

The International Code Council revises the IECC, which is about 150 pages, every three years. The Montana Department of Labor and Industry has adopted the 2012 International Energy Conservation Code (IECC), with amendments, at ARM 24.301.161.

The ASHRAE Standard 90.1 - 2010 *Energy Standard for Buildings Except Low-Rise Residential Buildings,* is about 225 pages and is an alternative compliance method to the IECC and is often included with the IECC.

The State of Montana High-Performance Building Standards, consisting of about 125 pages, establishes a goal for new state facilities to be 20 percent better than the IECC.

The Energy Escalation Rate Calculator would be adopted as a reference tool to standardize the escalation rate to be used in energy performance contracts. The tool has been created by the U.S. Department of Energy's Energy Information Administration (EIA).

Section (2) is reasonable and necessary to state where a copy of the materials to be incorporated by reference may be obtained.

NEW RULE III SOLICITATION AND EVALUATION OF QUALIFICATIONS AND MAINTENANCE OF LIST (1) After the department has issued a request for qualifications under 90-4-1111, MCA, and has received submissions of qualifications, it may request an energy service provider to provide additional information necessary to complete or clarify information set forth in a submission of qualifications or to satisfy other factors the department determines appropriate. If requested, an energy service provider shall submit the additional information to the department.

(2) An energy service provider may submit its qualifications to the department once per calendar year.

(3) If the department determines an energy service provider is qualified, it shall list the energy service provider upon the provider's execution of the base agreement with the department under 90-4-1110(1)(c), MCA. The department shall publish the list of qualified energy service providers on its website.

(4) An energy service provider listed by the department shall maintain the qualifications set forth in its submission of qualifications.

(5) An energy service provider shall report to the department significant changes to its qualifications within 60 days after the change occurs. Significant changes include the energy service provider:

(a) going out of business;

(b) no longer providing the services that originally qualified the energy service provider;

(c) changing personnel identified in its submission of qualifications or in report under this section; or

(d) any other matter determined by the department necessary to fulfill the requirements of this subchapter.

(6) The department shall review the provider's qualifications annually to determine if the provider is qualified to remain on the list of qualified energy providers.

AUTH: 90-4-1110, MCA
IMP: 90-4-1110, 90-4-1111, MCA

REASON: Under 90-4-1111, MCA, the department is required to request qualifications and review submitted qualifications of energy service providers at least every five years for potential inclusion on its list of qualified energy service providers. Qualifications may be submitted at any time. Subsection (2) of that statute requires the department to evaluate the submitted qualifications based on knowledge and experience with energy performance contracts, ability to guarantee cost-effectiveness, financial stability, and other factors determined by the department.

Section (1) is reasonably necessary to assure the department has all relevant information that it needs to evaluate submissions of qualifications. Based on its review of submitted qualifications, the department may determine that additional information is needed.

Section (2) is reasonably necessary to limit the number of reviews of submitted qualifications conducted by the department each year due to resource constraints.

Section (3) is reasonably necessary to satisfy the requirement in 90-4-1111(3), MCA, that the department maintain a list of qualified energy service providers.

Sections (4), (5), and (6) are reasonably necessary to ensure that each energy service provider maintains the qualifications necessary to remain on the qualified list.

NEW RULE IV ENERGY SERVICE PROVIDER DELISTING AND DISCIPLINE (1) The department shall delist an energy service provider if it determines that the energy service provider has failed to maintain the qualifications established under 90-4-1111(2), MCA.

(2) Based on the severity and culpability determined under (1), the department may decline to evaluate or act on a submission of qualifications by a provider for a period of up to five years.

(3) The department may relist an energy service provider delisted under (1) if the provider has remedied, to the satisfaction of the department, the failure to meet the qualifications established.

(4) If it determines that an energy service provider has violated Title 90, chapter 4, part 11, MCA, or an agreement or contract entered into pursuant to Title 90, chapter 4, part 11, MCA, the department may revoke or suspend the listing of the provider on the qualified list, place the provider on probation, reprimand or censure a provider, or take other appropriate disciplinary action.

(5) Based on the severity and culpability determined under (4), the department shall determine the type and duration of, or whether to modify, any action in (4).

(6) Upon taking action under (1) or (4), the department shall serve the energy service provider with a written notification of the action and the reasons for the action.

(7) A department action under (1) or (4) becomes final if the energy service provider does not file a written appeal with the department within 30 days after the notification was served. A written appeal must state with specificity the basis for appealing the determination.

(8) When it receives a written appeal, the department shall appoint a hearing examiner to conduct a hearing and decide the appeal. The Montana Rules of Civil Procedure, except 37(a)(5) and (b)(2)(C), and Montana Rules of Evidence, and the Uniform Rules of District Court, Rules, except Rules 7 and 9, apply to the appeal. Every reference in those rules to "court" or "judge" is deemed to be a reference to the hearing examiner.

(9) The hearing examiner shall serve the decision on the appeal on the parties. Except as provided in (10), the decision is final when served.

(10) A decision in (9) upholding a department action under (1) or (4) becomes final unless the provider files a written request for review with the department's director within 30 days after the decision was served.

(11) When the director receives a written request for review under (10), the director shall review the department action and issue a final decision. The director shall serve the final decision on the parties.

(12) After a department action or decision in this rule becomes final, the department shall:

(a) serve a copy to the energy service provider;

(b) provide a copy to each entity currently contracting with the energy service provider; and

(c) post a copy to the department's website.

(13) Service under this rule is accomplished via U.S. mail and is complete upon mailing.

(14) An energy service provider that has been delisted by the department shall fulfill all obligations for any current contract and meet the standard of conduct set forth in the base agreement.

AUTH: 90-4-1110, MCA
IMP: 90-4-1110, 90-4-1111, MCA

REASON: Sections (1), (2), and (3) are reasonably necessary to provide a procedure for the disqualification and delisting of energy service providers who do not comply with qualifications established through the request for qualifications as required by 90-4-1110(1)(b), MCA.

Sections (4) through (12) are reasonably necessary for the department to ensure qualified energy service providers are contracting and providing services in accordance with 90-4-1101 through 1114, MCA, as required by 90-4-1110(1)(c), MCA. These procedures generally follow the approach of the Montana Administrative Procedure Act (MAPA) for contested cases, although a contested case for a disciplinary action in these rules is not provided for by law, and so an appeal under this subchapter is not subject to MAPA. These proposed procedures are reasonable and provide due process to the energy service provider.

That statutory section authorizes the department to adopt rules "for … implementation of this part." The department is proposing to adopt in Section (4) provisions authorizing it to determine violations and take disciplinary action as provided in 37-1-136(1), MCA, which authorizes boards in charge of regulating occupations to adopt the authority to impose those types of action.

In Section (5), the department would be required to determine the type and duration of, or whether to modify, any disciplinary action in (4) based on the severity of the violation and the culpability of the energy service provider in committing it. This is necessary to ensure that the type and duration of any discipline are proportionate to the violation and culpability of the energy service provider.

Sections (6) through (13) would provide disciplinary procedures for a failure to comply with qualifications under (1) or a violation of a requirement of law, rule, or agreement under (4). These provisions also would establish a deadline for an appeal of a disciplinary action, a two-tier appeal process for delisting, and a one-tier appeal process for lesser disciplinary actions. While these appeal procedures generally follow the provisions of the Montana Administrative Procedure Act (MAPA), appeals of the disciplinary actions are not contested cases subject to MAPA. The appeal procedures are reasonable and necessary to provide due process to the energy service provider.

Section (14) is reasonably necessary to ensure that the delisting of an energy service provider does not affect its existing contractual obligations.

NEW RULE V ENERGY PERFORMANCE CONTRACT PROCESS (1) An entity must solicit a minimum of three energy service providers to submit project proposals.

(2) In a request for proposal issued by an entity, the entity shall identify the facilities that are proposed to be subject to an investment grade audit. The request for proposal may include an option to expand the project scope to include additional facilities.

(3) If the option to expand the project scope was not included in the request for proposal, an entity may not enter into an investment grade audit for a project that is outside the project scope of the request for proposal unless the entity issues another request for proposal listing additional facilities to be addressed in the project scope.

(4) If the option to expand the project scope was included in the request for proposal, the entity may:

(a) issue a request for proposal for the additional listed facilities;

(b) negotiate with the energy service provider to include additional listed facilities in the scope of work for the investment grade audit if the investment grade audit certificate has not been signed; or

(c) negotiate a new investment grade audit contract with the energy service provider if the investment grade audit certificate of acceptance has been signed.

(5) If the entity expands the project scope as provided in (1) and the energy service provider is no longer listed as a qualified provider, the entity shall:

(a) attempt to negotiate an investment grade audit contract with the provider that obtained the next-highest ranking in the request for proposal process; or

(b) issue a new request for proposal to qualified providers.

(6) The entity may not expand the project scope regarding investment grade audits more than five years after the issuance of the request for proposal for the initial project.

(7) An energy service provider may combine guaranteed cost savings for multiple contracts, as in phased or amended project contracts ("the combined energy performance contract") only if:

(a) the combined contract is based on the same investment grade audit;

(b) the combined contract meets the requirements of cost-effectiveness in 90-4-1102, MCA, and [New Rule VI];

(c) the combined contract meets all other requirements in statute and rule regarding qualification as an energy performance contract;

(d) the measurement and verification plan includes all measures in the combined contract; and

(e) measurement and verification is conducted for all measures at least through the initial monitoring period of the combined contract and through any additional period required by 90-4-1114(5)(b), MCA.

AUTH: 90-4-1110(2)(b), MCA
IMP: 90-4-1113, MCA

REASON: Although Section (1) repeats the requirement that entities solicit requests for proposals from a minimum of three qualified energy service providers, it is reasonable and necessary to repeat that requirement so that New Rule V is a stand-alone provision setting forth all requirements regarding requests for proposals.

Sections (2) and (3) are reasonably necessary to provide an energy service provider the flexibility to include in its response additional facilities/energy conservation measures than those anticipated by the entity. Requiring this option to be expressly stated in the request for proposal provides notice to all energy service providers that the entity is willing to consider additional options for resource conservation. This flexibility also allows future energy performance contracts to be based on an initial investment grade audit.

Section (4) is reasonably necessary to explain the options an entity has when an energy service provider has included additional facilities/energy conservation measures in its response.

Section (5) is reasonably necessary to explain the options an entity has when it expands a project scope and the selected energy service provider is no longer listed on the department's qualified list.

Section (6) is reasonably necessary to assure that energy performance contracts are based on a reasonably current investment grade audit.

Section (7) is reasonably necessary to describe the circumstances under which multiple energy performance contracts, or phases within a single energy performance contract, can be issued using a single investment grade audit.

NEW RULE VI COST-EFFECTIVENESS (1) When an energy performance contract includes multiple cost-saving measures and/or includes multiple buildings or facilities, cost-effectiveness is determined by adding together the guaranteed and unguaranteed cost savings per year for all cost saving measures for all buildings and facilities. This total must be equal to or exceed any financing repayment obligation each year of a finance term.

AUTH: 90-4-1102(1), 90-4-1110(3)(d), MCA
IMP: 90-4-1110(3)(d), MCA

REASON: Discussions held by the department with energy service providers and governmental entities raised a question on how cost-effectiveness must be applied – whether to individual measures, a single building, or an entire project. New Rule VI is reasonably necessary to clarify that cost-effectiveness is determined based on the entire project. Cost-saving measures with higher levels of cost-effectiveness may offset measures that are less cost-effective or not cost-effective.

NEW RULE VII ENERGY PERFORMANCE CONTRACT TERM AND PROCESS (1) The minimum term of an energy performance contract is four years or one year longer than the initial monitoring period, whichever is greater.

(2) An energy service provider may not enter into an energy performance contract before:

(a) completing the final investment grade audit report;

(b) completing an energy performance contract project proposal based on the final investment grade audit report; and

(c) receiving the certificate of acceptance for the investment grade audit from an entity.

(3) An entity may not issue a certificate of acceptance for implementation of the installed equipment, unless the entity has inspected and accepted the energy service provider's installation and operation of all project components and documents prepared by the energy service provider, including:

(a) measures identified in the scope of work of the energy performance contract;

(b) the energy performance contract commissioning report;

(c) the project operation and maintenance manual;

(d) the completion of entity operation and maintenance training as per contract documents; and

(e) the measurement and verification plan.

(4) An energy service provider may not negotiate the terms of measurement and verification reports and shortfall payments under 90-4-1114(6)(b), MCA, before the end of the initial monitoring period.

(5) An energy service provider may charge an entity only for costs listed in the investment grade audit contract or energy performance contract. Costs that may not be listed in either contract include costs incurred:

(a) in developing request for proposal responses;

(b) prior to both parties' signing an investment grade audit contract;

(c) between an entity's signing of an investment grade audit certificate of acceptance and the parties' signing of an energy performance contract; and

(d) in negotiating a shortfall.

(6) Each energy performance contract must state that it is contingent upon:

(a) the entity's securing funds for the buy-down, except for potential utility incentives; and

(b) obtaining financing for the balance of the total project cost.

(7) If funds are not secured or obtained as required in (5), the entity is not liable for any costs incurred under the energy performance contract.

(8) Any contingency funds must be identified in the energy performance contract and be included as part of the guaranteed maximum price and total cost of the energy performance contract. The entity retains control of the contingency fund, which may be spent only if the entity has provided written approval for the contingency expense and the expense is for goods or services necessary to implement cost-saving measures in the energy performance contract.

AUTH: 90-4-1110, MCA
IMP: 90-4-1110, 90-4-1113, 90-4-1114, MCA

REASON: A 20-year maximum term of an energy performance contract is defined in 90-4-1114(3)(b), MCA; however, a minimum term is not established in statute. Therefore, Section (1) is reasonably necessary to set a minimum term for an energy performance contract. By implication, the minimum period would be the initial monitoring period, which is a minimum of three years under 90-4-1114(5)(a), MCA, plus an additional year which is necessary to provide a period for final measurement and verification reporting. Therefore, the department is proposing that the minimum term for an energy performance contract be four years, or one year longer than the initial monitoring period.

Section (2) is reasonably necessary to set a sequential process for energy performance contracting. The purpose of an investment grade audit is to identify potential cost saving measures that may be included in an energy performance contract. Completion of an investment grade audit report, as signified by the certificate of acceptance, is necessary to determine energy savings on which a contract proposal is based.

Section (3) is reasonably necessary to state the components that an entity must deem to be satisfactory before signing the certificate of acceptance for an energy performance contract. The guarantee period starts when all work necessary for the governmental entity to operate the project and start receiving the benefits of its investment has been completed.

Section (4) is reasonably necessary to ensure that project shortfall payments are not negotiated until the initial monitoring period has elapsed. The dollar amount of actual future shortfalls cannot be accurately established before this time. The department's intent is for the energy service provider to identify, correct and document any shortfall in the measurement and verification reports before any negotiation of shortfall can be begin.

Section (5) is reasonably necessary to ensure that an energy service provider charges for costs associated with services provided under either an investment grade audit contract or an energy performance contract. This excludes costs incurred by the energy service provider leading up to the signing of an investment grade contract, between the acceptance of an investment grade audit and the signing of an energy performance contract, and after the acceptance of the equipment installation.

Section (6) is reasonably necessary to ensure that an energy performance contract not move forward until project funding is secured, including both the buy-down and the financing. Potential utility incentives included in the buy-down do not need to be secured prior to contract signature because the amount of the incentive is only estimated and not finalized until project closure.

Section (7) is reasonably necessary to protect the entity from charges incurred by the energy service provider when project financing has not been secured.

An energy performance contract includes either a fixed contract price or a Guaranteed Maximum Price (GMP) to cap the financial obligation of the entity. Section (8) is reasonable and necessary to require identification of contingency funds for unforeseen conditions in the contract price or GMP. Expenditures of contingency funds should be subject to approval by the entity. Any contingency funds remaining after the certificate of acceptance for Implementation of the installed equipment is signed should remain with the entity. The provisions of Section (8) follow the process established by the American Institute of Architects (AIA) in *The Architect's Handbook of Professional Practice*.

NEW RULE VIII MEASURING AND VERIFYING GUARANTEED COST SAVINGS (1) In the energy performance contract, the energy service provider shall:

(a) identify the cost of measurement and verification for each year of the initial monitoring period; and

(b) include the total cost of measurement and verification in the total project cost.

(2) In an investment grade audit report, an energy service provider shall identify the International Performance Measurement and Verification Protocol Option (A, B, C, or D) it intends to use for each cost-saving measure. The energy service provider shall also indicate the measurement and verification procedures it intends to follow in compliance with Federal Energy Management Program measurement and verification guidelines.

(3) The energy service provider shall measure key parameters before and after the implementation of the cost-saving measure.

(a) An energy service provider identifying International Performance Measurement and Verification Protocol Option A shall identify and document the

sources of the values used. Those values may be stipulated only with the written consent of the entity.

(b) An energy service provider identifying International Performance Measurement and Verification Protocol Option B, C, or D shall conduct short-term or continuous field measurement to document both baseline and post-implementation conditions.

(4) The energy service provider shall include in an energy performance contract a measurement and verification plan that complies with the Federal Energy Management Program measurement and verification guidelines. Between execution of the energy performance contract and issuance of the certificate of acceptance of installed equipment, the energy service provider may modify the measurement and verification plan only with the written consent of the entity.

(5) During the guarantee period, the energy service provider shall follow the measurement and verification plan included in the energy performance contract for which a certificate of acceptance has been issued. The measurement and verification plan may not be modified without the written approval of the entity. Any modification must be based on measurable or documented factors within the measurement and verification plan such as change in use or occupancy.

AUTH: 90-4-1110(1)(g), 90-4-1110(3)(c), MCA
IMP: 90-4-1114, 90-4-1114(5)(a), MCA

REASON: Under Section (1), it is reasonably necessary to require the energy service provider to disclose to the entity the cost of measurement and verification as part of the overall project cost. In the event of shortfall, this allows the entity to determine the value of measurement and verification that the provider must pay.

The performance of an energy performance contract requires measurement and verification. The International Performance Measurement and Verification Protocol (IPMVP) is an internationally-recognized approach that identifies options for measuring and verifying cost-saving measures. It has been adopted by several states and the federal government for performance contracts. The Federal Energy Management Program's Measurement and Verification Guidelines provides guidance in applying the options set forth in the IPMVP. It is reasonable and necessary in Section (2) to require energy service providers to identify the options that are applicable to the energy performance contract project. This ensures that both the energy service provider and the entity have a mutually agreed upon and consistent method for determining project performance.

In Section (3), it is reasonably necessary to require the energy service provider to measure key parameters before and after the implementation of the cost saving measure to verify that the cost savings are realized. Subsections (a) and (b) are reasonably necessary to enable the entity to determine the sources of the calculations used by the energy service provider in measuring and verifying cost savings under the applicable protocol.

Section (4) is reasonably necessary to allow the energy service provider to modify how the performance of the cost-saving measures will be verified after the investment grade audit report has been completed. Changes must be mutually

agreed to by the energy service provider and the entity. This reduces the risk to the entity for adjustments related to any potential shortfall.

Section (5) is reasonably necessary to require consistent implementation of the measurement and verification plan included in the signed energy performance to ensure the entity receives the services and cost savings as stated in the energy performance contract. The measurement and verification plan may be changed only with consent of the entity.

NEW RULE IX GUARANTEED COST SAVINGS AND PROJECT FINANCING (1) For a project to qualify as an energy performance contract, the guaranteed cost savings, plus any cost savings attributable to escalation under [New Rule XI], must be greater than or equal to any repayment obligation for each year of the finance term.

(2) A buy-down may be used in an energy performance contract only if the amount and sources of the buy-down are established in the energy performance contract. A buy-down is limited to utility incentives, or funds in the possession of the entity such as grants, capital reserves, or funds received from other sources.

(3) Except as provided in (4), if an energy performance contract contains an amount of a utility incentive as a buy-down, the energy service provider shall project the amount of the incentive to be used as a buy-down. If the utility incentive used as a buy-down received by the entity is:

(a) less than or equal to the projected amount, the entity shall pay any incentive amount received to the energy service provider, and the entity's obligation to pay the total project cost to the energy service provider is reduced by the amount by which the utility incentive received is less than the projected amount; or

(b) greater than the projected amount, the entity shall pay the projected amount to the energy service provider and retain the excess.

(4) If the utility has reduced the incentive due to a lack of sufficient incentive program funds or a change in the utility incentive program, and the utility incentive received is less than the projected amount, the entity shall pay the energy service provider the amount the projected utility incentive was less than the final utility incentive buy-down.

(5) Except for a general obligation bond, an entity may not enter into a financing agreement or issue an obligation, including a loan agreement, bond, installment payment contract, or lease purchase agreement, for energy performance contract project financing unless the agreement or obligation states that the restrictions on collectability in 90-4-1109, MCA, apply.

(6) If the energy service provider provides operation and maintenance services related to cost-saving measures implemented in an energy performance contract, the costs of these services must be included in the total project cost.

(7) The total cost for operation and maintenance cost-saving measures may not exceed 50 percent of the total project cost of the energy performance contract.

AUTH: 90-4-1110, 90-4-1110(2)(b), MCA
IMP: 90-4-1110, 90-4-1113(2), 90-4-1114(2), MCA

REASON: Section (1) is reasonable and necessary to ensure that energy performance contracts are cost effective as defined in 90-4-1102(1), MCA.

Section (2) is reasonable and necessary to implement 90-4-1114(2), MCA stating that "[u]tility incentives, grants, operating costs, capital budgets, or other permissible sources may be used to reduce the amount of financing" of an energy performance contract. A source used to decrease the amount financed is referred to as "buy-down." Requiring a buy-down to be disclosed in an energy performance contract enables an entity, an energy service provider, or a third-party reviewer to determine whether the buy-down is allowable under 90-4-1114(2), MCA.

Under New Rule IX, an energy performance contract is contingent upon funding of both the buy-down and any financed amount and the entity is not liable if funds are not obtained. Unlike other sources of funding used as buy-down, an entity does not receive a utility incentive until a project closes. Therefore, the dollar amount of the incentive is only estimated when the energy performance contract is signed. Section (3) is reasonable and necessary to allow adjustments either upwards or downwards to reflect the actual amount of the incentive, protecting the entity from erroneous estimates of utility incentive.

Because the energy service provider has no control over the utility incentive program, Section (4) is reasonable and necessary to not hold the energy service provider accountable for any shortfall resulting from reductions in utility incentive programs.

Only general obligation bonds are collectible against funds other than guaranteed cost savings or other revenue that has been pledged to pay for the financing of an energy performance contract. Other financing mechanisms such as bank loans, installment payment contracts, or lease purchase agreements, are collectible only from guaranteed cost savings provided in the energy performance contract and other revenue, if any, pledged in the energy performance contract. It is reasonable and necessary for Section (5) to require language containing this restriction in any financing agreement or non-general obligation bond so that any lender or bond holder will have notice of this restriction.

An entity may choose to have the energy service provider operate and/or maintain its facility during the initial monitoring period. It is reasonable and necessary for Section (6) to identify these services and include the cost of these services as part of the total project costs in the energy performance contract.

Operation and maintenance cost saving measures are typically measures, such as behavioral modification, that require little or no capital or installed equipment. It is reasonable and necessary to limit the total cost for operation and maintenance cost-saving measures as set forth in Section (7) for the following reasons:

(a) Under 90-4-1101 and 1102, MCA, the purpose of an energy performance contract is to conserve energy and water and thus obtain cost savings. Long-term, verifiable energy and water use reductions, and associated cost savings, are achieved through capital equipment upgrades.

(b) Savings attributable to operation and maintenance improvements are generally difficult to measure and verify.

(c) Operation and maintenance improvements may not deliver sustained and consistent savings over the long-term financing period as required by the savings guarantee.

NEW RULE X NEW CONSTRUCTION AND CHANGE OF USE (1) For new construction or facilities/buildings undergoing a change of use, an energy service provider shall determine guaranteed cost savings by taking the difference between the cost of the energy or water usage of the baseline and of the proposed design.

(a) Except as provided in (1)(b), an energy service provider shall determine the costs of the baseline and of the proposed design by using Section C407 (Total Building Performance) of the Energy Code or Informative Appendix G (Performance Rating Method) from ASHRAE Standard 90.1.

(b) For a state-owned building, an energy service provider shall determine the costs of the baseline and of the proposed design by using a building baseline that meets or exceeds the criteria in the High-Performance Building Standards.

(2) An energy service provider may include as guaranteed operation and maintenance cost savings only the savings from operating or maintaining a facility. Such guaranteed operation and maintenance cost savings may include savings from renting or leasing property only if the property is rented or leased when the investment grade audit contract is signed.

(3) Except as provided in (4), an energy performance contract may not include new construction that increases the total square footage of a facility.

(4) New construction in an energy performance contract shall be limited to:

(a) buildings or structures used to house boilers, chillers, generators, and similar equipment required as part of a cost-saving measure;

(b) mechanical penthouses; and

(c) buildings or structures determined by the department to be necessary to implement the cost-saving measure.

AUTH: 90-4-1110, MCA
IMP: 90-4-1110, MCA

REASON: Section (1) is reasonably necessary to specify how building baseline utility usage may be determined for consistency purposes.

Section (2) is reasonably necessary to limit operation and maintenance savings for rented or leased property to only current leases and only for the current rental or lease period.

Sections (3) and (4) are reasonably necessary to exclude new construction from an energy performance contract unless the construction was a component of a cost-saving measure. For example, a new structure housing a mechanical system would be allowed if the total project, including the cost of the mechanical system and new structure, is cost effective.

NEW RULE XI ESCALATION RATES If an energy service provider uses an escalation rate in an energy performance contract, then:

(1) An energy service provider shall use the Energy Escalation Rate Calculator to determine the maximum escalation rate for each listed fuel type.

(2) An escalation rate may not exceed the default inflation rate provided in the Energy Escalation Rate Calculator for:

(a) fuel types not listed in the Energy Escalation Rate Calculator;

(b) water; or

(c) operation and maintenance.

(3) For each fuel type, water, and operation and maintenance, the energy service provider and the entity shall negotiate the escalation rate to be used in an energy performance contract. Each rate may not exceed the maximum rate determined in (2).

(4) Throughout the investment grade audit and energy performance contract process, the energy service provider shall use separate escalation rates for each fuel type, water, and operations and maintenance from the Energy Escalation Rate Calculator in (1) and (2).

(5) In an energy performance contract, the escalation rate for each fuel type, water, and operation and maintenance must remain constant for the financing term.

(6) The energy service provider shall include in the energy performance contract measurement and verification plan a determination of cost savings for each fuel type and water that first calculates the units saved (e.g., kWh, DKT, etc.) or savings due to reduction in peak load (e.g., kw) and then multiplies each unit saved by its associated rate. The associated rate is:

$AR = BR * (1.0+Esc)^{(n-1)}$, where:

AR is the associated rate for the fuel type in dollars,

BR is the baseline rate for the fuel type in dollars as established in the energy performance contract,

Esc is the fuel type escalation rate, and

n is the year of the contract finance term beginning after the effective date.

AUTH: 90-4-1110, MCA
IMP: 90-4-1110, 90-4-1114, MCA

REASON: This rule is reasonably necessary to establish a standard method for determining escalation rates energy service providers often use escalation rates in their cash flow analyses to demonstrate that the project is cost-effective because utility or other costs are projected to rise, increasing the savings earned by cost-saving measures. Escalation rates may also be used to calculate shortfall payments.

In Section (1), the department is adopting the Energy Escalation Rate Calculator developed by the Department of Energy as the standard method for determining escalation rates used in energy performance contract. Because the EERC does not include escalation rates for all fuel commodities, water, or operation and maintenance, it is reasonable and necessary for Sections (2) through (6) to place parameters on the use of escalation rates to maintain consistency in cost savings calculations. The energy service provider and entity are required to negotiate escalation rates for individual fuel types not listed in the EERC, water, or operation and maintenance, but the negotiated rate may not exceed the default inflation rate provided in the EERC. Negotiated rates must remain constant

throughout the finance term. Finally, savings must be calculated for each year of the initial monitoring period and subsequent years of measurement and verification using a specified cost savings calculation. The calculation included in (6) in its standard form would be AR = BR * (1.0+Esc) ^{n} as found in numerous resources for economic calculations. However, since the baseline utility rate is typically used for the first year of savings, the escalation factor (1.0+Esc) is set equal to 1 (no escalation). This is equivalent to setting the exponent to n-1.

NEW RULE XII OPEN BOOK PRICING (1) In an investment grade audit and an energy performance contract, an energy service provider shall provide open book pricing that discloses all costs.

(2) An energy service provider shall maintain cost accounting records for all actual costs, including costs for labor, materials, and other services for work performed under an investment grade audit or an energy performance contract.

(3) An energy service provider shall provide the records in (1) and (2) to the entity or the department on request, and shall preserve the records for one year after the initial monitoring period.

(4) In an investment grade audit contract, the energy service provider shall provide the pricing methodology and project cost percentages. The methodology and percentages must be based on the estimated project scope and size.

(5) If there has been no substantial change in project scope or size after preparation of an investment grade audit contract, the energy service provider shall provide in the energy performance contract the pricing methodology and cost percentages from the investment grade audit contract.

(6) If there has been a substantial change in project scope or size after preparation of an investment grade audit contract, the energy service provider shall provide in the energy performance contract the revised pricing methodology and cost percentages.

(7) The energy service provider may not increase the markup percentage for any category after the submitting a response to a request for proposal.

(8) To request payment for work done or services rendered under an energy performance contract, the energy service provider shall submit to the entity an invoice with a detailed report describing costs being billed.

AUTH: 90-4-1110, MCA
IMP: 90-4-1110, MCA

REASON: Sections (1) through (3) of New Rule XII are reasonable and necessary to allow the entity to review the accounting records, including invoices, labor costs, and other cost components related to the energy performance contract. This ensures that the entity pays only for the actual cost plus agreed-upon markups for the project. This is necessary because an energy service provider is not required to procure sub-contractors through a competitive process. Open book pricing is common in contracting, particularly where guaranteed maximum price (or cost) is used.

Section (4) is reasonable and necessary for the energy service provider to disclose the calculations used in the energy performance contract so that the entity may verify the cost effectiveness of the energy performance contract.

Sections (5) through (7) are reasonable and necessary to allow the energy service provider to modify its input to some portions of the cost and pricing tool, but would prohibit increasing the markup percentage. The markup percentage may not be increased as this is a consideration that the entity used to select the energy service provider for the project. This rule is based on provisions included in the documents from other states, including Colorado, and from the U.S. Department of Energy. The department has developed a cost and pricing tool that will be made available to energy service providers for use throughout the energy performance contract process.

Section (8) is reasonable and necessary to provide an entity with an itemized billing of services, equipment, and materials provided by the energy services provider.

NEW RULE XIII ENERGY SERVICE PROVIDER REPORTING REQUIREMENTS (1) An energy service provider shall notify the department via email at least two weeks before entering into an investment grade audit or energy performance contract. The notification must include the names of the energy service provider and the entity, and the name, email address, and phone number of the designated contact for the energy service provider and the entity.

(2) An energy service provider shall provide to the department electronic copies of the following:

(a) the energy performance contract proposed project summary at least two weeks prior to the signing of an energy performance contract;

(b) the energy performance contract project summary report within two weeks after issuance of a certificate of acceptance; and

(c) the measurement and verification reports, at the same time the reports are submitted to the entity.

(3) Upon request by the department, the energy service provider shall provide to the department electronic copies of the following:

(a) the investment grade audit contract;

(b) the final investment grade audit report and any addendum to the report;

(c) the investment grade audit certificate of acceptance;

(d) the energy performance contract;

(e) the certificate of acceptance for the implementation of installed equipment;

(f) negotiated terms of measurement and verification reports and amount of shortfall payment under 90-4-1114(6)(b), MCA; and

(g) any other document determined by the department to be necessary to fulfill the purposes of this subchapter, within two weeks after receiving a request.

AUTH: 90-4-1110(1)(h), MCA
IMP: 90-4-1110, MCA

REASON: The purpose of New Rule XIII is to provide the department with information it needs to evaluate the effectiveness of energy performance contracting in the state. These reporting requirements are similar to requirements from other states. Section (1) requires notification to the department two weeks before an investment grade audit is initiated, or an energy performance contract is executed. This allows the department to offer technical assistance to governmental entities before these two important project milestones are initiated.

Section (2) lists three documents that the energy service provider is required to deliver to the department along with timing of submission of the documents. Submission of the energy performance contract proposed project summary as required in (2)(a) would provide the department with data necessary to determine if a proposed project qualifies as an energy performance contract. This would allow the department to provide technical assistance to an entity. Submission of the energy performance contract project summary report as required in (2)(b) would provide the department with a summary report of the energy performance contract project in order for the department to evaluate the effectiveness of savings resulting from an energy performance contract. Submission of the measurement and verification report as required in (2)(c) would permit the department to track project performance after completion.

The purpose of Section (3) is to give the department the authority to request other documents associated with an energy service provider's provision of services under an energy performance contract. Department review of the documents may be necessary to respond to specific requests from entities or for a programmatic review conducted by the department.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt@gov, no later than 5:00 p.m. September 13, 2018. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality,

1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

6. Norm Mullen, attorney for the department, has been designated to preside over and conduct the hearing.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and were fulfilled through a letter addressed to the Honorable Jill Cohenour, dated January 8, 2016.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/
EDWARD HAYES
Rule Reviewer

BY: */s/*
TOM LIVERS
Director

Certified to the Secretary of State, July 31, 2018.